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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,039	02/27/2002	Henry K. Hui	JOHNA.056DV2	6923
20995	7590	10/06/2003	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			COE, SUSAN D	
		ART UNIT	PAPER NUMBER	1654

DATE MAILED: 10/06/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/090,039	HUI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Susan Coe	1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 July 2003.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 21-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 21-27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

1. The amendment filed July 18, 2003, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 21-27 are currently pending.

### ***Claim Objections***

3. Claim 26 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 26 states that the buffer with the pKa in the first pH range is at a lower concentration than the second buffer. However, this limitation is already incorporated into lines 9 and 10 of claim 21. Therefore, claim 26 does not further limit claim 21.

### ***Claim Rejections - 35 USC § 103***

4. Claims 21-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,474,931 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Claim 21 has been amended to specify a specific concentration ratio of the two buffers. US '931 does not specifically teach using the buffers in the amounts claimed by applicant. However, the amount of buffer in a culture broth is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. An artisan of ordinary skill would modify the culture medium taught by US '931 to determine the

best concentrations of each buffer to use in order to achieve a broth that has the best ability to support the growth of microorganisms. This optimization of buffer concentration would very reasonably lead to a culture broth that contains the same buffer concentrations and pH of that of applicant's culture broth even though the reference does not specifically teach the use of the "dual buffer system" as described by applicant.

5. Claims 21-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Pat. Appl. No. 07135984 A for the reason set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Claim 21 has been amended to specify a specific concentration ratio of the two buffers. JP '984 does not specifically teach using the buffers in the amounts claimed by applicant. However, the amount of buffer in a culture broth is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. An artisan of ordinary skill would modify the culture medium taught by JP '984 to determine the best concentrations of each buffer to use in order to achieve a broth that has the best ability to support the growth of microorganisms. This optimization of buffer concentration would very reasonably lead to a culture broth that contains the same buffer concentrations and pH of that of applicant's culture broth even though the reference does not specifically teach the use of the "dual buffer system" as described by applicant.

6. No claims are allowed.

Art Unit: 1654

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

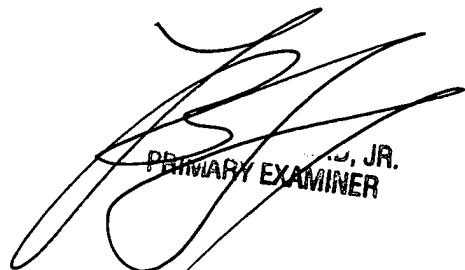
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner  
October 2, 2003



SUSAN COE, JR.  
PRIMARY EXAMINER